

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Review of Part 87 of the Commission's Rules	)	WT Docket No. 01-289
Concerning the Aviation Radio Service	)	

**REPLY COMMENTS OF SITA**

Societe Internationale de Telecommunications Aeronautiques ("SITA") hereby replies to the jointly filed comments of Aeronautical Radio, Inc. ("ARINC") and the Air Transport Association of America ("ATA") with regard to the Commission's request for comment on the need for changes to the "one licensee per location" rule – 47 C.F.R. § 87.261.<sup>1</sup> SITA had originally raised this issue in the context of the Commission's implementation of the WTO treaty obligations because of a concern that the "one licensee per location" rule could be used to unlawfully exclude SITA from providing aeronautical enroute service in the United States. The Commission decided not to change the rule in the WTO implementation proceeding and therefore still does not make clear in its rules how competitors are supposed to gain access to the spectrum. However, notwithstanding this ambiguity, SITA has been able to gain entry into the U.S. marketplace through a private arrangement with ARINC to use spectrum licensed to it. Thus, in its initial comments in this proceeding, SITA did not call for elimination of the "one licensee per

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<sup>1</sup> *Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Service*, FCC 01-303, released October 16, 2001 at ¶¶ 12-16.

location rule.” Rather, SITA asked the Commission to impose explicit non-discrimination obligations and safeguards on ARINC, which serves as the frequency coordinator for this spectrum under color of the “one licensee per location” rule (since ARINC holds virtually all of the aeronautical enroute licenses).

Based on the initial comments filed in this proceeding, there is significant agreement between SITA and ARINC with regard to the aeronautical enroute service and the role that ARINC plays in maintaining the integrity of this band. SITA agrees that the aeronautical enroute service provides valuable and critical services.<sup>2</sup> SITA likewise agrees that the efficiency of the band must be maximized. Thus, careful management of the spectrum and coordination among the operators is essential to ensure that frequencies do not lie idle or are not rendered inoperable as a result of harmful interference. SITA believes that ARINC, through its Aeronautical Frequency Committee whose members represent the Aircraft Station licensees, has performed these functions well to date for the aeronautical enroute bands.

There is one area of disagreement between SITA and ARINC, however, and SITA believes that a modification of the “one licensee per location” rule should be adopted by the Commission in this proceeding. SITA does not believe it is necessary to alter the substance of the rule, which has generally allowed the aeronautical enroute spectrum to be used in a coordinated and efficient manner. Rather, SITA believes the Commission should codify non-discrimination safeguards into Section 87.261, since ARINC has

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<sup>2</sup> *E.g.*, ARINC/ATA Comments at pp. 2-4.

assumed the role of a frequency coordinator or band manager under color of that provision,<sup>3</sup> although without any of the safeguards normally imposed by the Commission.

ARINC variously characterizes itself as a frequency coordinator or band manager for the aeronautical enroute spectrum.<sup>4</sup> Whether ARINC's role is most analogous to that of a band manager or frequency coordinator should not affect the Commission's action in this proceeding, however, because the Commission imposes non-discrimination obligations on both coordinators and managers. As SITA pointed out in its initial comments in this proceeding, the Commission has explicitly required that frequency coordinators act in a non-discriminatory manner.<sup>5</sup> Likewise, the Commission specifies that band managers "may not engage in unjust or unreasonable discrimination among spectrum users and may not unreasonably deny prospective spectrum users access to" the licensee's band.<sup>6</sup>

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<sup>3</sup> SITA observes that Section 87.261 only specifies that there must be a single licensee at each location, not that there must be a single nationwide licensee that will manage and/or coordinate use of the band. *Cf.*, ARINC/ATA Comments at p. 10 ("the Rules in Part 87 do not limit the number of stations or competitors per location. Rather, the rules facilitate a coordination scheme that accommodates multiple competing systems.") Nevertheless, because ARINC does hold the vast majority of the aeronautical enroute licenses throughout the nation, it has assumed the role of frequency coordinator/band manager. According to ARINC's comments, ARINC holds more than 5,200 licenses, although it only uses 466 of them to provide service itself. ARINC/ATA Comments at p. ii.

<sup>4</sup> *See, e.g.*, ARINC/ATA Comments at p. ii (refers to its coordinator role) and ARINC/ATA Comments at pp. 14-15 (refers to its band manager role).

<sup>5</sup> *See* SITA Comments at pp. 4-5.

<sup>6</sup> 47 C.F.R. § 27.603 (a). *See also Service Rules for the 746-764 and 776-794 MHz Bands*, 15 FCC Rcd 5299, 5327 (rel. Mar. 9, 2000). SITA also observes that the Commission requires that band managers lease the predominant amount of its spectrum to non-affiliates, 47 C.F.R. § 27.603 (c), which presumably would be satisfied here since ARINC's service provider operations use only 466 of the more than 5,200 licenses held

According to its comments, ARINC currently performs its coordinator/manager role in a non-discriminatory, transparent fashion.<sup>7</sup> Indeed, SITA has been able to gain entry into the aeronautical enroute market in the United States through use of ARINC's licenses following the Commission's ruling in the WTO proceeding. Nevertheless, SITA remains concerned that the single licensee in this band is subject to no safeguards, especially because the Commission has selected as that single licensee ARINC, who acts both as the coordinator/manager and as a competitive service provider.<sup>8</sup> Serving as both a competitor and coordinator/manager presents inherent conflicts of interest. SITA thus believes that the Commission should codify non-discrimination obligations in Section 87.261 of the Commission's Rules, because ARINC derives its frequency coordinator/band manager role under color of that provision. Such a measure will ensure that ARINC's policy of and commitment to non-discrimination is not changed unilaterally, and will put ARINC on equal footing with frequency coordinators and band managers that the Commission has explicitly selected or licensed. Amending Section 87.261 in this manner is also consistent with the Commission's obligations under the WTO Agreement.<sup>9</sup> Appendix A hereto sets forth proposed language to accomplish this

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by ARINC.

<sup>7</sup> ARINC/ATA Comments at pp. iii ("current regulations provide for a system that treats foreign service providers identically to domestic and affords access to frequencies through an objective, timely, transparent and non-discriminatory process"); p. 3 ("non-discriminatory system of spectrum management"); and p. 7 ("ARINC utilizes neutral criteria").

<sup>8</sup> *Cf.*, ARINC/ATA Comments at p. 11, where ARINC acknowledges this dual role: "ARINC's role as the facilitator of the industry's spectrum management activities should not be confused with ARINC's activities as a service provider."

<sup>9</sup> *Cf.* ARINC/ATA Comments at p. 10 ("Clearly the United States can continue to

goal and to make clear that ARINC has the authority to act as a frequency coordinator/band manager.

SITA does not believe it is necessary for the Commission to otherwise change the substance of the “one licensee per location” rule, or to displace ARINC from its role as the coordinator/manager of this band. SITA does believe, however, that imposing explicit non-discrimination obligations will help ensure the continuation of a competitive market for aeronautical enroute services, and thus well serve the public interest.

Respectfully submitted,

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employ its frequency management system and be consistent with its WTO obligations, especially when the frequency management system has been able to – and anticipates continuing to be able to – provide non-discriminatory market access to new domestic and foreign service providers.”).

**APPENDIX A**  
Proposed Rule Revision (new language underlined)

Sec. 87.261 Scope of service.

Aeronautical Enroute Stations

(a) Aeronautical enroute stations provide operational control communications to aircraft along domestic or international air routes. Operational control communications include the safe, efficient and economical operation of aircraft, such as fuel, weather, position reports, aircraft performance, and essential services and supplies. Public correspondence is prohibited.

(b) Service must be provided to any aircraft station licensee who makes cooperative arrangements for the operation, maintenance and liability of the stations which are to furnish enroute service. In emergency or distress situations service must be provided without prior arrangements.

(c) Except in Alaska, only one aeronautical enroute station licensee will be authorized at any one location. In Alaska, only one aeronautical enroute station licensee in the domestic service and one aeronautical enroute station licensee in the international service will be authorized at any one location. (Because enroute stations may provide service over a large area containing a number of air routes or only provide communications in the local area of an airport, location here means the area which can be adequately served by the particular station.)

(d) The single aeronautical enroute station licensee shall allow aeronautical enroute service providers to operate stations in the licensee's spectrum and shall provide coordination among service users, on a non-profit cost shared basis, to assure adequate enroute communications at reasonable costs and efficient use of available spectrum. The licensee shall retain ultimate control, and is responsible for assuring that the authorized facility is used only by persons and only for purposes consistent with this rule part. The licensee may not engage in unjust or unreasonable discrimination among spectrum users, and may not unreasonably deny access to the licensee's spectrum.

~~(d)~~ (e) In Alaska, only stations which serve scheduled air carriers will be licensed to operate aeronautical enroute stations. Applicants must show that the station will provide communications only along routes served by scheduled air carriers.

~~(e)~~ (f) Mobile units may be operated under an aeronautical enroute station authorization so long as the units are limited to use at an airport and are only used to communicate with aircraft on the ground or the associated aeronautical enroute station. Mobile units are further limited to operation on the VHF frequencies listed in 87.263(a)(1).

(fg) Mobile units licensed under paragraph (ef) of this section shall not be operated on air traffic control frequencies, nor cause harmful interference to, communications on air traffic control frequencies.